

## **CHAPTER 10.**

### **Overall Annual DBE Goal and Projections for FTA-funded Contracts**

As with FHWA and FAA, ADOT is required to set an overall annual goal for DBE participation in its FTA-funded transportation contracts. The 2014 Availability Study did not analyze information for setting an overall three-year DBE goal for FTA-funded contracts, as ADOT's deadline for having this new three-year goal in place is October 1, 2015.

Chapter 10 provides information for ADOT to consider for setting a new overall annual DBE goal for FTA-funded contracts and its projection of how much of the goal is to be met through race-neutral measures. Chapter 10 has three parts based on the process that 49 CFR Part 26.45 outlines for agencies to set their overall goals and project the portion to be met through neutral means:

- A. Establishing a base figure;
- B. Consideration of a step 2 adjustment; and
- C. Portion of overall DBE goal for FTA-funded contracts to be met through neutral means.

#### **A. Establishing a Base Figure**

Establishing a base figure is the first step in calculating an overall annual goal for DBE participation in ADOT's FTA-funded transportation contracts. As presented in Chapter 5, currently-certified DBEs are available for 7.25 percent of ADOT FTA-funded transportation contracts based on analysis of July 2007 through June 2013 FTA-funded contracts. ADOT might consider 7.25 percent as the base figure for its DBE goal.

Chapter 5 explains the methodology for the base figure calculation in considerable detail.

#### **B. Consideration of a Step 2 Adjustment**

Per the Federal DBE Program, ADOT must consider potential step 2 adjustments to the base figure as part of determining its overall annual DBE goal for FTA-funded contracts. Federal regulations outline factors that an agency must consider when assessing whether to make any step 2 adjustments to its base figure:

- 1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
- 2. Information related to employment, self-employment, education, training, and unions;
- 3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
- 4. Other relevant factors.<sup>1</sup>

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<sup>1</sup> 49 CFR Section 26.45.

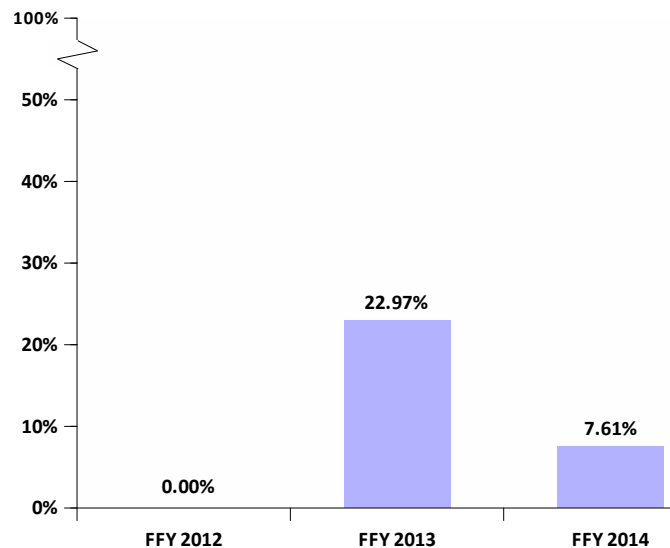
Keen Independent completed an analysis of each of the above step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information examined was not as easily quantifiable but is still relevant to ADOT as it determines whether to make any step 2 adjustments.

**1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years.** USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

DBE participation based on ADOT Uniform Reports to FTA. Figure 10-1 presents information about past DBE participation based on payments from ADOT Uniform Reports of DBE Awards or Commitments and Payments reported to the FTA. Participation is shown for FFYs 2012, 2013 and 2014, the three most recent complete federal fiscal years at the time of the disparity study. Median DBE participation based on payments for these three years is 7.61 percent. ADOT achieved this participation entirely through neutral means.

Figure 10-1.  
ADOT reported past DBE participation  
on FTA-funded contracts based on  
payments, federal fiscal years 2012,  
2013 and 2014

Source: ADOT Uniform Reports of DBE  
Awards/Commitments and Payments



If the past DBE participation is close to value of the base figure, an agency does not need to make a step 2 adjustment as long as it explains why.<sup>2</sup>

DBE participation based on Keen Independent utilization analysis for FTA- funded contracts. Keen Independent’s analysis identified 26.90 percent participation of DBEs on FTA- funded contracts from July 2007 through June 2013. ADOT might consider these data when determining whether to make a step 2 adjustment based on past DBE participation.

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<sup>2</sup> Note that “Tips for Goal-Setting” considers the possibility that the base figure and the goal based on a step-2 adjustment might be very close. “If your records suggest levels of past participation very similar to the number you calculated in Step One, then it is not necessary to make any adjustment for past participation.” The example USDOT provides for “very similar” is when the base figure and the calculation after the step 2 adjustment are within 1.4 percentage points of one another. “In that case, you do not need to make an adjustment for past participation. Nevertheless, you must explicitly state that the reason you are not making an adjustment for past participation is that your past participation has been very similar to your Step One Base Figure.” (See III.A.2. of USDOT, “Tips for Goal-Setting.”)

## **2. Information related to employment, self-employment, education, training, and unions.**

Chapter 4 summarizes information about conditions in the Arizona transportation contracting industry for minorities, women and MBE/WBEs. Detailed quantitative analyses of marketplace conditions in Arizona are presented in Appendices E through H. Keen Independent's analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the Arizona construction and engineering industries. Such barriers may affect the availability of MBE/WBEs to obtain and perform ADOT and local agency transportation contracts.

It may not be possible to quantify the cumulative effect that barriers in employment, education, and training may have had in depressing the availability of minority- and women-owned firms in the Arizona transportation contracting industry. However, the effects of barriers in business ownership can be quantified, as explained in Chapter 8.

The study team used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Arizona construction and engineering industries. The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F provides detailed results of the business ownership regression analyses).<sup>3</sup> Those analyses revealed that African Americans, Native Americans and white women working in construction were less likely than non-minorities and white men to own construction businesses, even after accounting for various gender-neutral personal characteristics. Each of these disparities was statistically significant.

In Chapter 8, Keen Independent analyzed the impact that barriers in business ownership would have on the base figure for FHWA-funded contracts if African Americans, Native Americans and white women owned businesses at the same rate as similarly-situated non-minorities and white men. This type of inquiry is sometimes referred to as a "but for" analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

The analysis indicated a possible upward step 2 adjustment of 3.71 percentage points (see Figure 8-2 in Chapter 8). This might be an appropriate upward step 2 adjustment if ADOT chose to make such an adjustment.

**3. Any disparities in the ability of DBEs to get financing, bonding and insurance.** Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in the Arizona marketplace.
- Any barriers that MBE/WBEs face in obtaining financing and bonding would also place those businesses at a disadvantage in obtaining ADOT and local agency construction and engineering prime contracts and subcontracts.

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<sup>3</sup> The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois and Minnesota.

Note that financing and bonding are closely linked, as discussed in Chapter 4 and Appendix J.

There is also evidence that some firms cannot bid on certain public sector projects because they cannot afford the levels of insurance required by the agency. This barrier appears to affect small businesses, which might disproportionately impact minority- and women-owned firms.

The information about financing, bonding and insurance supports an upward step 2 adjustment in ADOT's overall annual goal for DBE participation in FTA-funded contracts.

**4. Other factors.** The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.<sup>4</sup>

**Success in the Arizona marketplace.** Among the “other factors” examined in this disparity study was the success of MBE/WBEs relative to majority-owned businesses in the Arizona marketplace. There is quantitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors. Chapter 4 summarizes that evidence and Appendix H presents supporting quantitative analyses. There is also qualitative evidence of barriers to the success of minority- and women-owned businesses, as summarized in Chapter 4. Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Arizona transportation contracting industry.

**Approaches for making step 2 adjustments.** Quantification of potential step 2 adjustments is discussed below.

**1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years.** Analysis of this factor might indicate a downward step 2 adjustment if ADOT analyzed its estimates of past DBE participation (based on payments) — for recent years, the median reported DBE participation on FTA-funded contracts was 7.61 percent (from Figure 10-1). As this is very close to the base figure, ADOT would not need to make a step 2 adjustment based on these data as long as it explained its reasoning.

**2. Information related to employment, self-employment, education, training, and unions.** The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 3.71 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 8-1 in Chapter 8.

If ADOT made this same adjustment for FTA-funded contracts, the overall DBE goal would be 10.96 percent (7.25% + 3.71% = 10.96%).

**3. Any disparities in the ability of DBEs to get financing, bonding and insurance.** Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, impact of these factors on availability could not be quantified.

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<sup>4</sup> 49 CFR Section 26.45.

**4. Other factors.** Impact of the many barriers to success of MBE/WBEs in Arizona could not be specifically quantified. However, the evidence supports an upward adjustment.

**Summary.** ADOT will need to consider whether to make a downward, upward or no step 2 adjustment when determining its overall DBE goal.

### **C. Portion of DBE Goal for FTA-funded Contracts to be Met through Neutral Means**

As explained in Chapter 8, the Federal DBE Program requires state and local transportation agencies to meet the maximum feasible portion of their overall DBE goals using race- and gender-neutral measures. Along with setting an overall goal for DBE participation, agencies must project the portion of that goal they expect to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any). USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral and race- and gender-conscious measures, as outlined in detail in Chapter 8. (The extensive discussion in Chapter 8 is not repeated here.)

**1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?** The 2015 Disparity Study provides results of the local marketplace research (summarized in Chapter 4) and analyses of MBE/WBE utilization and availability (see Chapters 6 and 7). This information is also summarized below.

**Marketplace conditions.** As discussed in Chapter 4, Keen Independent examined conditions in the Arizona marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes. It is important to note that some minority and female business owners interviewed did not think they had been affected by race or gender discrimination.

ADOT should review the information about marketplace conditions presented in Chapter 4 and Appendices E through H, as well as other information it may have, when considering the extent to which it can meet its overall DBE goal through neutral measures.

**Disparity analysis.** Overall, there was no disparity between the utilization of MBE/WBEs (45.8%), higher than what might be expected from the availability analysis (33.8%).

- Although MBEs received 15.2 percent of FTA-funded contracts, this level of utilization was less than what might be expected based on the availability analysis for MBEs for these contracts (24.7%). The disparity index for MBEs was 62. Utilization exceeded availability for African American-, Asian-Pacific American- and Native American-owned firms. There were disparities for Subcontinent Asian American- and Hispanic American-owned firms.
- White women-owned firms received 31 percent of contract dollars, higher than the 9.1 percent that might be expected based on the availability analysis for FTA-funded contracts.

Figure 6-11 in Chapter 6 presents overall utilization and availability results for MBEs and WBEs in FTA-funded contracts.

**Summary.** There is substantial evidence that there is not a level playing for minority- and women-owned firms in the Arizona marketplace. However, minority- and women-owned firms received nearly one-half of the FTA contract dollars during the study period, more than what might be anticipated from the availability analysis.

**2. What has been the agency's past experience in meeting its overall DBE goal?** Figure 10-2 summarizes ADOT's reported certified DBE participation for the most recent three federal fiscal years. As shown, reported DBE participation based on DBE commitments/awards on FTA-funded contracts was less than the DBE goal of 3.82 percent for two of the three years, but so exceeded the goal in FFY 2014 that overall attainment was 12.05 percent for the three-year period.

Results based on payments also indicate that ADOT utilization of DBEs was considerably above the 3.82 percent overall goal. Overall DBE utilization over these three years was 9.02 percent based on payments. In sum, DBE participation on ADOT's FTA-funded contracts has exceeded its 3.82 percent goal in recent years.

Figure 10-2.

ADOT overall DBE goal and reported DBE participation on FTA-funded contracts, FFY 2012 through FFY 2014

Federal fiscal year	DBE goal	DBE commitments/awards		Difference from DBE goal	
		awards	DBE payments	Awards	Payments
2012	3.82 %	1.07 %	0.00 %	-2.75 %	-3.82 %
2013	3.82	0.50	22.97	-3.32	19.15
2014	3.82	39.00	7.61	35.18	3.79

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

Keen Independent separately examined participation of DBEs on FTA-funded contracts for the July 2007 through June 2013 study period. As reported in Chapter 6, this analysis indicates 26.9 percent participation of DBEs in that time period.

**3. What has DBE participation been when ADOT has not applied DBE contract goals (or other race-conscious remedies)?** All of the DBE participation has been in a neutral environment.

**4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?** When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, ADOT must review the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or could consider for future implementation.

Keen Independent's analysis of neutral remedies in Chapter 7 indicates that ADOT has implemented an extensive set of neutral measures. Three current initiatives that could affect participation are:

- ADOT has retained Donato Consulting to conduct one-on-one meetings with potential DBEs identified in the 2014 Availability Study to encourage firms to become DBE certified. This is one way to increase reported DBE participation through neutral means, as some of these companies may already be doing business with ADOT. Certification will allow this participation to count toward ADOT's overall DBE goal.
- ADOT plans to expand online information available to small businesses, including DBEs, through a Virtual Assistant website. This new website might be launched within the next 12 months.
- ADOT has a "Just One More" campaign to encourage prime contracts to use one more DBE than needed to meet a DBE contract goal.

At this time, it is difficult to quantify how much the above initiatives can increase race-neutral participation of DBEs in ADOT's FTA-funded contracts.

Keen Independent also examined other potential neutral measures. Research into expanded SBC programs, such as SBC contract goals and an SBC set-aside program, indicate that ADOT might not have the authority under state law to implement such measures. Although ADOT might consider further research into these two initiatives, it does not appear that they could be implemented within the FFY 2015 through FFY 2017 time period for which these projections apply (or ever under current restrictions).

## Summary

Chapter 10 provides information to ADOT as it considers its overall DBE goal for FFY 2016 through FFY 2018 for FTA-funded contracts and its projection of the portion of its overall DBE goal to be achieved through neutral means.

**1. Overall DBE goal for FTA-funded contracts.** ADOT might consider an overall DBE goal of 7.25 percent based on information in the Disparity Study (see Chapter 5 and further exploration earlier in Chapter 10).

**2. Should ADOT project that it can meet all of its overall DBE goal through neutral means?**

ADOT must consider whether it can achieve 100 percent of its overall DBE goal through neutral means or whether race-conscious programs are needed. The historical information summarized in Chapter 10 indicates that ADOT can achieve an overall DBE goal of 7.25 percent entirely through neutral means.